

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BRAINWAVE SCIENCE, INC.,

Plaintiff,

v.

NEURO SCIENCE TECHNOLOGIES,
LLC, *et al.*,

Defendants.

Case No. 2:20-cv-01481-RAJ

**ORDER GRANTING MOTION
TO DISMISS**

This matter comes before the Court on Defendant Ronald J. Kirkendorfer's Motion to Dismiss for Lack of Notice of Service (Dkt. # 21). For the reasons below, the Court **GRANTS** the motion.

Federal Rule of Civil Procedure 4 requires a complaint to be served on a defendant within 90 days after it is filed. Fed. R. Civ. P. 4(m). If it is not, the court must dismiss the action without prejudice against that defendant. *Id.*

Here, Plaintiff Brainwave Science Inc. ("Brainwave") filed an amended complaint on October 8, 2020. Dkt. # 6. Because Brainwave failed to timely serve Defendant Neuro Science Technologies LLC ("Neuro Science"), the Court, after issuing an order to show cause, dismissed Neuro Science without prejudice. Dkt. # 20. That left Mr. Kirkendorfer as the sole remaining defendant in this action. Now, Mr. Kirkendorfer

1 moves to dismiss the complaint as to him, arguing that as of April 8, 2021—six months
2 after the complaint was filed—he has still not been properly served. Dkt. # 21. In its
3 response, Brainwave admits that it has not served Mr. Kirkendorfer and “agrees that the
4 claims against him may be dismissed on this basis.” Dkt. # 31.

5 Given that Brainwave has failed to timely serve Mr. Kirkendorfer under Rule
6 4(m), the Court **GRANTS** Mr. Kirkendorfer’s motion to dismiss (Dkt. # 21) and
7 **DISMISSES** him without prejudice. Mr. Kirkendorfer’s earlier motion to dismiss (Dkt.
8 # 12) is **DENIED as moot**.

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10 **IT IS SO ORDERED.**

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12 DATED this 14th day of September, 2021.

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17 The Honorable Richard A. Jones
18 United States District Judge
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